

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2402 of 1997

For Approval and Signature:

Hon'ble THE ACTING CJ R.A.MEHTA and  
MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? - No.
2. To be referred to the Reporter or not? - No.
3. Whether Their Lordships wish to see the fair copy of the judgement?- No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.
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MANCHHABHAI FAKIRBHAI

Versus

TAX RECOVERY OFFICER

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Appearance:

MR KH KAJI for Petitioner  
MR MANISH R BHATT for Respondent No. 1

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CORAM : THE ACTING CJ R.A.MEHTA and

MR.JUSTICE R.K.ABICHANDANI

Date of decision: 10/04/97

ORAL JUDGEMENT : (Per R.A. Mehta, Acting C.J.)

Rule. Mr.M.R. Bhatt waives service of Rule on behalf of the respondent.

The petitioner challenges the auction advertisement dated 12th March, 1997. By that advertisement, the property at item No.15 was sought to be auctioned on 27th March, 1997.

The petitioner submits that under Rule 53 of the

Second Schedule to the Income Tax Act, 1961, a notice was issued for settling a sale proclamation. However, that notice did not fix any date for drawing up the proclamation of sale and settling the terms thereof. He has produced before us a xerox copy of that notice under Rule 53 of the Second Schedule to the Income Tax Act, which is taken on record. The learned counsel for the petitioner says that the notice was issued on 4th February, 1997. The sale proclamation Exhibit 'B' is also issued on the same day, i.e. 4th February, 1997, as seen from Exhibit 'B'. It is, thus, clear that the sale proclamation has been issued without giving any opportunity of hearing for settling the various terms and conditions of the said auction and, therefore, that proclamation, so far as the petitioner's property at item No.15 is concerned, cannot be sustained and is required to be set aside. Hence, the impugned proclamation so far as it concerns the petitioner's property at item No.15, is set aside, but, the authorities will be free to proceed for recovering the balance amount from the petitioner in accordance with law.

The amount deposited by the petitioner for the principal amount will be credited towards the dues payable by the petitioner.

Rule is made absolute with no order as to costs.

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(apj)